

REMARKS**Introduction**

Claims 1 and 3-15 are pending, of which claims 1, 11 and 15 are independent.

Claims 1 and 3-14 have been amended to correct informalities in the claim language and to more clearly define the claimed subject matter. Claims 1 and 11 have been amended by partially incorporating the limitations of claim 2. Accordingly, claim 2 has been cancelled. Claim 15 has been added to recite additional subject matter disclosed in the original specification that was not previously claimed. Support for the new claim may be found, for example, at page 17, line 17 – page 24, line 25 of the specification. No new matter has been entered.

Applicants respectfully request that the Examiner initial in the appropriate boxes of Form 1449 submitted on March 11, 2008 and return the copy with the next official communication. The copy enclosed with the June 24, 2008 Action was only partially initialed (not initialed by the citation of Fielding, R. et al. in the “OTHER ART” section).

Novelty under 35 U.S.C. § 102

Claims 1-2, 5-6 and 11 are rejected under 35 U.S.C. § 102 as being anticipated by Peiffer (USP 7,007,092). Applicants respectfully traverse this rejection for at least the following reasons.

Applicants submit that amended claims 1 and 11 now recite a part of the limitations of cancelled claim 2. In rejecting claim 2, the Examiner asserts that the reference numeral 210 in Fig. 7 of Peiffer corresponds to a unit for measuring the reception performance of the client apparatus of claim 2. Applicants disagree.

Applicants respectfully submit that the step 210 in Fig. 7 of Peiffer is clearly labeled with “[m]onitor performance indicator correlated to **server** response time” (emphasis added). This

step 210 clearly fails to disclose measuring the reception performance of the **client** apparatus as recited by amended claims 1 and 11. As such, it is clear that, at a minimum, Peiffer does not teach or even suggest that recited limitations of claims 1 and 11 regarding a unit for measuring reception performance of a client apparatus.

To anticipate, every element and limitation of the claimed subject matter must be found in a single prior art reference, arranged as in the claims. *Brown v. 3M*, 265 F.3d 1349, 60 USPQ2d 1375 (Fed. Cir. 2001). At a minimum, the cited prior art does not disclose expressly or inherently the required measurement of reception performance of the client apparatus. Thus, Peiffer does not anticipate either claim 1 or claim 11. Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 1 and 11. Since claims 5-6 depend upon claim 1, these claims are also allowable for at least the same reasons as claim 1.

Non-Obviousness under 35 U.S.C. § 103(a)

Claims 3, 10 and 13-14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Peiffer in view of Agrawal (USP 6,606,661). Claims 4, 7-9 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Peiffer in view of Miyamoto (USP 6,101,542). Applicants respectfully traverse these rejections for at least the following reasons.

Applicants respectfully submit that claims 3-4, 7-10 and 12-14 depend upon either claim 1 or claim 11. As discussed above, Pfeiffer fails to disclose a unit for measuring the reception performance of the client apparatus as recited by their base claims 1 and 11. Agrawal does not cure the deficiencies of Peiffer because in Agrawal, the server estimates the load on the **server** and uses the estimate to modify the timer value (see, col. 2, lines 32-34 of Agrawal). Miyamoto also fails to cure the deficiencies of Peiffer because Miyamoto fails to disclose measuring the

reception performance of the clients. As such, it is clear that, at a minimum, the combinations of Peiffer and Agrawal or Peiffer and Miyamoto fail to disclose or even suggest the above discussed limitations of claims 3-4, 7-10 and 12-14.

Accordingly, as each and every element must be disclosed or suggested in the cited prior art references in order to establish a *prima facie* case of obviousness (*see*, M.P.E.P. § 2143.03), it is clear that the combinations of Peiffer and Agrawal and of Peiffer and Miyamoto do not render any of claims 3-4, 7-10 and 12-14 obvious. Thus, Applicants respectfully request that the Examiner withdraw the rejections of claims 3-4, 7-10 and 12-14.

New Claim

Applicants respectfully submit that any of the cited prior references or any combinations thereof fail to disclose or even suggest the limitations recited by claim 15. For instance, none of the cited references discloses a unit for measuring the time for receiving the response; a unit for adding the value to obtain a sum of client performance; and a unit for refusing the acceptance of a new service request, as recited by claim 15. Accordingly, it is respectfully submitted that new claim 15 is patentable over the cited references.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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